

REMARKS

Claims 1 through 21 were pending in the application. By this amendment, claim 1 has been amended to incorporate the limitations formerly included in original claim 16. Claim 17 has been amended to reflect the change in dependency created by the foregoing amendment. Claims 16 and 21 have been canceled.

The following remarks are in response to the grounds for rejection of claims set forth in the Office Action.

I. Claims Rejected Under 35 U.S.C. § 102

The Examiner rejected: (i) claims 1 through 8 as being anticipated by Hayhurst et al. (USP 5,269,809); (ii) claims 1 and 8 as being anticipated by Swanstrom et al. (USP 6,669,707); (iii) claims 1, 8, 16, and 17 as being anticipated by Laufer et al. (USP 6,494,888); and (iv) claim 21 as being anticipated by Cope (USP 6,699,263). Without acceding to any of the grounds set forth in these rejections, Applicant responds as follows.

Claim 1 has been amended to include the subject matter formerly contained in original claim 16 – i.e., “a plication apparatus adapted to form a tissue fold within a patient.” Accordingly, the rejections of claim 1 (and the claims dependent therefrom) over the Hayhurst and Swanstrom patents are obviated.

Claim 21 has been canceled, thereby obviating the rejection of that claim over the Cope patent.

This leaves the rejection of claims based upon the Laufer patent. In rejecting claim 16, the Examiner stated his contention that the Laufer patent describes an apparatus “where the anchor assembly is adapted for adjustment of the length of suture between the anchors (by adjustment of the location of knot 823).” However, claim 1 recites an anchor assembly that is adapted for adjustment of the length of suture disposed between the proximal and distal anchors “while the anchor assembly is disposed across the tissue fold.” Even accepting the Examiner’s contention that the location of the knot (823) formed in the suture of the Laufer device can be adjusted, the Laufer patent does not disclose, teach, or suggest that knot location is adapted for adjustment “while the anchor

assembly is disposed across the tissue fold," nor does the patent disclose, teach, or suggest any mechanism for doing so. Accordingly, the Laufer patent fails to disclose every element of claim 1, and claim 1 (and the claims dependent therefrom) cannot be anticipated by Laufer.

Accordingly, because none of the cited references discloses, teaches, or suggests an apparatus that includes all of the limitations recited in these claims, as amended, the claims are not anticipated. Applicant requests withdrawal of the rejections and allowance of the claims.

II. Claims Rejected Under 35 U.S.C. § 103

Claims 9-12 and 14 were rejected as being unpatentable over Swanstrom et al. (USP 6,669,707) in view of Cope (6,699,263). Each of these claims depends from claim 1, which, as discussed above, has been amended to include the subject matter formerly included in original claim 16. Neither the Swanstrom patent nor the Cope patent provides any of the teachings missing from either the Hayhurst, Swanstrom, or Laufer patents. Accordingly, these claims are patentable for the reasons set forth in the preceding section.

Claims 18 through 20 were rejected as being unpatentable over Cope in view of Harrison et al. (USP 5,403,326). The Examiner stated that:

- Cope discloses a method for securing gastrointestinal tissue, but does not disclose that the tissue is folded, and that a tissue fold is formed with a plication apparatus.
- Harrison teaches apparatuses and methods for securing a gastrointestinal tissue fold, including a plication apparatus.

Based upon these teachings, the Examiner contended that it would have been obvious: to apply the method of Cope to securing a gastrointestinal tissue fold, and to apply a plication apparatus to form the fold. The method of Cope would allow fundoplication of the stomach with an anchor assembly that can be adjusted according to the size of tissue to be folded; while a

plication apparatus would allow manipulation of tissue to be secured with the anchor assembly.

(Office Action, pp. 5-6).

While Applicant agrees that the Cope and Harrison patents teach the subject matter identified by the Examiner, Applicant strongly disagrees with the Examiner's conclusion that it would have been obvious to a person having ordinary skill in the art to combine the teachings of these two patents in the manner suggested. There is simply no teaching or suggestion in either of the patents that would have motivated such a person to do so. The devices are intended for very different purposes – the Harrison patent describes a device and method for treatment of GERD via fundoplication of the stomach and esophagus, whereas the Cope patent describes a device and method for anastomosing two hollow viscera. These are different procedures intended for treatment of different indications. For example, there is no suggestion in the Harrison patent of any need for adjusting a length of suture extending between proximal and distal anchors. In addition, the apparatuses and methods taught by the Cope and Harrison patents are entirely incompatible. The Harrison device includes a passageway 70 through which the hook 42 or jaw-like grasper 72 is introduced to perform tissue grabbing and stapling in a single step. (Harrison, col. 7, ll. 44-47). In the Cope device, the passageway (lumen) of the catheter 50 is the space occupied by the anchor 30. In a combined device, it would not be possible to deploy the anchor while the tissue fold is being held by the grasper.

Because there is nothing in either the Cope patent or the Harrison patent (or in the art in general) that would have suggested the combination of these references, the rejection of claims based upon this combination should be withdrawn. Accordingly, claim 18 and the claims dependent therefrom should be allowed.

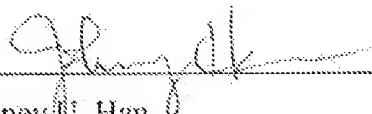
Amendment and/or cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented, but rather as an attempt to expedite allowance and issuance of the currently pending claims. No new matter has been added.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections and pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the appropriate fee and/or petition is not filed herewith and the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with this filing to **Deposit Account No. 50-3973** referencing Attorney Docket No. **USGINZ02114**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,



Johny U. Han
Registration No. 45,565

Charles C. Fowler
Registration No. 39,675

Customer No. 40518
Levine Bagade Han LLP
2483 East Bayshore Road, Suite 100
Palo Alto, CA 94303
Direct: (650) 242-4217
Fax: (650) 284-2180